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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GILBERT A. RASKE,

Petitioner,

vs.

THE BOARD OF COMMISSIONERS
OF THE FOREST PRESERVE DISTRICT
OF COOK COUNTY, ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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38 pp

QUESTIONS PRESENTED FOR REVIEW

1. Does the Fourteenth Amendment due process clause relating to liberty require a hearing for dismissal of an Illinois seasonal police officer whose employment is based upon patronage and which employment can be terminated without a property right to a hearing?

2. Does the allegation of dismissal without cause based upon political considerations result in a First Amendment violation?

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

On February 28, 1984, the Honorable Frank J. McGarr, Chief Judge of the United States District Court for the Northern District of Illinois, Eastern Division, granted the respondent's motion to dismiss petitioner's first amended complaint.

One of the bases of dismissal for that complaint was that the petitioner did not have a liberty interest right to a hearing, since he did not meet the conditions for a liberty

interest violation from the standpoint of not having a stigmatizing statement made about his good name, reputation, honor and integrity resulting in termination of employment with a foreclosure of future employment opportunities.

Further in that opinion, the Honorable Frank J. McGarr asserted that the petitioner's first amended complaint did not involve the denial of equal protection in that his dismissal as a seasonal Illinois police officer without having a property right to a hearing was based upon applicable Illinois law that did not provide for such a property right.

In addition, the Honorable Frank J. McGarr stated that allegations that the petitioner was dismissed without a hearing for political considerations or reasons was a conclusory allegation thereby not fulfilling the requirement that a cause of action had been stated. (The memorandum of February 28, 1984, of the Honorable Frank J. McGarr is reprinted herein as Appendix B.)

On November 21, 1984, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, affirmed the judgment of the Honorable Frank J. McGarr. (The opinion of the United States Court of Appeals of November 21, 1984, is reprinted herein as Appendix A.)

In its opinion, the United States Court of Appeals holds that the concept of liberty recognizes two particular interests of a public employee; that is, the protection of his good name, reputation, honor and integrity, and the freedom to take advantage of other employment opportunities.

As a consequence, the appellate court maintains that the petitioner herein did not have a liberty interest violation in that he did not allege that his standing in the com-

munity was seriously damaged by the respondent's decision not to rehire him and that there is nothing alleged in his first amended complaint which even remotely suggests that the decision is a barrier to alternate employment.

Therefore, there is no liberty interest violation under the Fourteenth Amendment to the United States Constitution.

Likewise, the appellate court stated that there was no equal protection violation, since the petitioner was a seasonal employee not entitled to any type of due process hearing as guaranteed other civil service employees who are considered as permanent employees.

Lastly, the United States Court of Appeals asserted that there is no violation of any First Amendment right in that to dismiss the petitioner herein without a hearing on the basis of an allegation that the dismissal was related to a patronage system was a conclusory allegation and not sufficient to state a cause of action.

JURISDICTION

1. The federal questions were raised by the petitioner in his complaint and first amended complaint for declaratory judgment and other relief alleging the violation of due process and equal protection clauses and First Amendment rights in that, as a seasonal police officer not entitled to a property hearing prior to dismissal pursuant to an Illinois Civil Service Act, nevertheless, he had a liberty interest violation which required such a hearing.

2. The Petition for Writ of Certiorari was filed within 90 days after the entry of the judgment by the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, on November 21, 1984.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

That, from September of 1980, until December 1, 1982, the petitioner had been a full-time seasonal police officer for the Forest Preserve Police Department of Cook County, Illinois.

That, under applicable Illinois statutory law, the petitioner did not have a proprietary right to a due process hearing.

That, prior to his dismissal on December 1, 1982, the petitioner served on numerous occasions as a tactical police officer whose police duties involved police patrol in busy and big crime areas.

That, in addition, on several occasions, the petitioner had served as a supervisory police officer for the respondent.

That, prior to the termination of his employment as a seasonal police officer by the respondent, the petitioner performed the same duties as those of temporary and permanent police officers employed by the respondent.

That, on December 1, 1982, the petitioner filed a complaint for declaratory judgment in the United States District Court for the Northern District of Illinois, Eastern Division, which subsequently was amended to a first amended complaint and which pertinent allegations are stated herein:

> 17. That the Plaintiff as a Seasonal Police Officer employed by the Defendant could only continue his employment at the whim of the Defendant and that he could not have the protection of a temporary employee or a permanent employee as employed by the

Defendant who could not be terminated without a hearing, since the temporary and permanent employees achieved such protection via the political patronage system of Cook County Illinois.

18. That the actions of the Defendant by terminating the Plaintiff from his employment as a Seasonal Police Officer because of political reasons in violation of the First Amendment rights and in violation of his due process clause, liberty interest, the Fourteenth Amendment of the United States Constitution represented the official policy and custom and practice of the Defendant.

19. That the Plaintiff is treated differently as a Seasonal Police Officer from those of temporary and permanent Police Officers employed by the Defendant in that he has been denied a property right to a hearing prior to termination on the basis of the existence of the political patronage system as found in the Defendant's employment in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

20. That the Defendant either intentionally, purposely, maliciously, or in reckless disregard, practices political patronage to foster the deprivation of the constitutional right of the Plaintiff's liberty interest in engaging in a common occupation of life such as Seasonal Police Work by subjecting him to a termination without due process hearing in violation of the Fourteenth Amendment, denial of equal protection of the Fourteenth Amendment of the United States Constitution and deprivation of his First Amendment right to speak freely on political subjects including political parties without fear of loss of employment.

REASONS FOR GRANTING THE WRIT

I.

THAT AN ILLINOIS SEASONAL POLICE OFFICER WHOSE EMPLOYMENT IS BASED UPON PATRONAGE AND WHICH EMPLOYMENT IS NOT ENTITLED TO A HEARING PRIOR TO DISMISSAL REQUIRES A LIBERTY INTEREST HEARING IRRESPECTIVE OF STIGMATIZATION OF GOOD NAME, REPUTATION, HONOR AND INTEGRITY RESULTING IN FORECLOSURE OF FUTURE EMPLOYMENT OPPORTUNITIES.

In *Board of Regents v. Roth*, 408 U.S. 564 (1972), *Paul v. Davis*, 424 U.S. 693 (1976), and *Bishop v. Wood*, 426 U.S. 341 (1976), the United States Supreme Court has addressed the issue of the type of right that a public employee has relative to a hearing prior to termination.

In the aforesaid cases, in the absence of a property right entitling one to a hearing prior to termination, the Supreme Court has ruled that there can be a hearing pursuant to a liberty interest violation under the Constitution of the United States, Fourteenth Amendment.

In order to have a liberty interest violation, the United States Supreme Court has held that there must be a stigma attached to a public employee's termination foreclosing future employment opportunities.

This stigma that must attach has to concern one's good name, reputation, honor and integrity.

Examples of such stigma would be if one were to be described as a thief, as a batterer, as an arsonist, and as an alcoholic.

That a liberty interest hearing can result irrespective of a stigmatization of one's good name, reputation, honor

and integrity, thereby foreclosing future employment opportunities, is substantiated by the United States Supreme Court's decision in *Goss v. Lopez*, 419 U.S. 565 (1975), which decision concerned itself with a question of whether there should be a due process hearing for student suspensions of less than ten days under a specific Ohio statute which provided no property right for such hearings without stigma considerations.

Concerning this particular issue, the Supreme Court of the United States stated that, although the United States Constitution does not require states, such as Ohio, to establish public schools for students, nevertheless students who attend public high schools are entitled to due process hearings relative to suspension less than ten days.

The *Goss v. Lopez* court also determined that suspensions of ten days or more require formalized hearing of due process, since the impact of a ten-day suspension is greater than that of suspension less than ten days.

In effect the Supreme Court in *Goss v. Lopez* recognized that there was a necessity of some type of informal due process for suspensions of less than ten days; that is, notice of charges and an opportunity to respond either in writing or by a confrontation with the disciplinarian in a one on one situation.

In a very recent Illinois case of *Wagner v. Kramer*, 125 Ill. App. 3d 12 (1984), the Illinois Appellate Court, Second District, concerned itself with an issue of whether police officers who are suspended for five days or less and are not entitled to a property hearing, nevertheless are entitled to a liberty interest hearing.

On page 21 of that opinion, *Wagner v. Kramer*, the Illinois Appellate Court analyzed and distinguished *Goss* for the purpose of providing a liberty interest hearing, and

judicial review for police officers who have been suspended for five days or less.

In its analysis of *Goss v. Lopez*, the court exhaustively discussed the fact that, although *Goss v. Lopez* did not approve a formalized due process hearing for suspension of less than ten days, it did recognize the importance of some type of rudimentary due process hearing.

But, *Wagner v. Kramer* has determined that the rudimentary due process hearing is not suited for the type of involvement in which a police officer finds himself.

The reason that the Appellate Court refused to follow *Goss v. Lopez* is that the administrative burden and cost factor relative to conducting hearings for all types of student suspensions is obvious in that there are abundantly more students than police officers who could request such hearings.

Likewise, students do not suffer the substantial economic loss that a police officer does when he is suspended for any time in terms of either one day or in excess of one day, since the court can take judicial notice that the economic conditions of this country have been not the best in the last several years, and any loss of pay by any employee, whether private or public, has been an adverse impact not only upon the employee, upon his family, but upon the economy of this country.

Therefore, since the *Wagner* Appellate Court determined that suspensions of five days or less require a formalized hearing regardless of the presence of a property right to a hearing and the existence of a stigma as to one's good name, reputation, honor, or integrity, certainly a discharge would require such a hearing in that it would embody the concept of a liberty interest violation.

At the same time, to deny a hearing for a discharge wherein there is no property right to such a pretermination hearing involving police officers, in interpreting another Illinois case of *Kropel v. Conlisk*, 60 Ill. 2d 17, 322 N.E.2d 793 (1975), the *Wagner* court stated that it would involve the constitutional considerations of due process and equal protection when it stated at page 14 of its opinion:

> "if, then, it is clear that there are outer limits to the superintendent's power of suspension, and that the public policy of this State has generally provided for some form of review of suspensions, if section 10-1-18.1 of the Municipal Code is to survive constitutional attack on due process and equal protection grounds, we must construe it to provide for some manner of review of suspensions for less than 30 days." *Kropel v. Conlisk*, 60 Ill. 2d 17, 26 (1975).

As a result, there is no question on the basis of the above quotations from the *Wagner* court that there is a due process and equal protection violation for denying a due process hearing to a police officer irrespective of the stigma considerations of one's good name, honor, reputation, or integrity.

Because a police officer requires a due process hearing based upon this Petition for Writ of Certiorari, a finding of dismissal cannot be contrary to the weight of the evidence and that the cause for such dismissal cannot be arbitrary, unreasonable, or unrelated to the requirements of the service, since, if that is the standard for a suspension of five days or less pursuant to *Wagner v. Kramer*, then that must be the standard for a dismissal.

Since the petitioner's discharge was based upon political considerations as alleged in the first amended complaint, such an allegation overcomes a motion to dismiss on a legal theory that it is not conclusory, but a statement of

fact and that such a discharge is against the manifest weight of the evidence by being in violation of the due process clause relative to liberty and freedom of speech; furthermore it would not be based upon cause, since it would be arbitrary, unreasonable, and unrelated to the requirements of the service.

II.

THAT AN ALLEGATION IN A COMPLAINT THAT AN ILLINOIS SEASONAL POLICE OFFICER IS TERMINATED WITHOUT CAUSE BASED UPON POLITICAL CONSIDERATIONS REPRESENTING THE OFFICIAL POLICY AND CUSTOM AND PRACTICE OF THE RESPONDENT STATES A CAUSE OF ACTION.

In his first amended complaint, in paragraph 18, the petitioner alleged that his termination from employment without a hearing and without cause related to political considerations in that the action of the respondent was based upon the official policy and custom and practice, which allegations for purposes of a motion to dismiss are admitted as true, then the petitioner has stated a cause of action.

As a result, pursuant to *Shakman v. The Democratic Organization of Cook County*, 481 F. Supp. 1315 (1979), at page 1333 the court asserts:

> "(The Supreme Court's) decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments. E.g., *Elrod v. Burns*, 427 U.S. 347, 355-357 (96 S.Ct. 2673, 49 L.Ed. 2d 547 (1976) (plurality opinion)); *Cousins v. Wigoda*, 419 U.S. 477, 487 (95 S.Ct. 541, 42 L.Ed. 2d 595 (1975)); *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (94 S.Ct. 303, 38 L.Ed. 2d 260 (1973)); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-461 (78 S.Ct. 1163, 2 L.Ed. 2d 1488 (1958))."

Based upon the above observation, there is no question that the petitioner was denied a first amendment violation right.

CONCLUSION

For reasons enumerated herein, the petitioner prays that his Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX A

[UNPUBLISHED ORDER NOT TO BE CITED PER CIRCUIT RULE 35]

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
(Submitted October 31, 1984)*

November 21, 1984.

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. JOHN L. COFFEY, *Circuit Judge*

GILBERT A. RASKE,

Plaintiff-Appellant,

No. 84-1480 vs.

THE BOARD OF COMMISSIONERS OF THE FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 83 C 4897
The Honorable **Frank J. McGarr**, Judge Presiding.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." *See* Rule 34(a), Fed. R. App. P.; Circuit Rule 14(f). No such statement having been filed, the appeal has been submitted on the briefs and record.

ORDER

Plaintiff-appellant Gilbert A. Raske appeals from the dismissal of his first amended complaint for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). Raske sought relief pursuant to 42 U.S.C. § 1983 alleging violations of his due process and equal protection rights under the fourteenth amendment and his first amendment right to free speech. The district court found no deprivation of a protected fourteenth amendment interest, no similarly situated class of persons, and insufficient allegations to constitute a first amendment violation. We affirm.

As alleged in his first amended complaint,[1] Raske was employed as a full-time seasonal police officer by the Cook County, Illinois Forest Preserve Police Department from September of 1980 to December 1, 1982. Raske also alleges that he served as a tactical and a supervisory police officer several times during the course of his employment and that as a seasonal officer he performed the same duties as temporary and permanent officers. Apparently, it was the custom and practice of defendant to extend its offers to rehire seasonal police officers each December 1st. *See* Ill. Rev. Stat. ch. 34, § 1119 (1983). Raske was rehired in 1980 and 1981, but not rehired on December 1, 1982 allegedly for political reasons. Raske contends that the actions of the Board of Commissioners in failing to rehire him for political reasons violated his first and fourteenth amendment rights and represented the official policy, custom, and practice of the defendant.

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[1] Although affidavits were submitted by both parties in connection with the motion to dismiss, it is clear from the district court's order that these affidavits were not considered. *See* Fed. R. Civ. P. 12(b)(6). Rather, only the pleadings formed the basis for dismissal. Therefore, we limit our review to the pleadings. *See Zapp v. United Transportation Union*, 727 F.2d 617 (7th Cir. 1984); *Albery v. Reddig*, 718 F.2d 245 (7th Cir. 1983).

A complaint should not be dismissed on Rule 12(b)(6) grounds unless the plaintiff can prove no set of facts which entitle him to relief. Fed. R. Civ. P. 12(b)(6). *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Zapp v. United Transportation Union*, 727 F.2d 617, 627 (7th Cir. 1984). Well-pleaded material facts are taken as true, and we resolve any doubts in favor of the plaintiff. *City of Milwaukee v. Saxbe*, 546 F.2d 693 (7th Cir. 1976). The liberal policy behind notice pleading is not, however, without limit. A plaintiff in a civil rights case must plead some particularized facts demonstrating a constitutional deprivation. *See Jafree v. Barber*, 689 F.2d 640, 643 (7th Cir. 1982) (per curiam); *Cohen v. Illinois Institute of Technology*, 581 F.2d 658, 663 (7th Cir. 1978), *cert. denied*, 439 U.S. 1135 (1979). The requirement of some minimum specificity in pleading civil rights complaints is substantially supported by decisions in other circuits as well. *See Hobson v. Wilson*, 727 F.2d 1, 30 (D.C. Cir. 1984) (requirement of particularity in pleading civil rights complaints); *Jones v. Community Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984) (conclusory allegations, unsupported by facts, insufficient to state a claim under the Civil Rights Act); *Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983) (pleading insufficient to state a claim under the Civil Rights Act where allegations are mere conclusions); *Dewey v. University of New Hampshire*, 694 F.2d 1, 3 (1st Cir. 1982), *cert. denied*, 103 S. Ct. 2121 (1983) (claim must set forth minimal facts, not subjective characterizations, as to who did what to whom and why); *Kaylor v. Fields*, 661 F.2d 1177, 1183 (8th Cir. 1981) (complaint must contain more than mere conclusory statements unsupported by specific facts); *United States v. City of Philadelphia*, 644 F.2d 187, 204 (3d Cir. 1980) (require modest degree of actual specificity in civil rights complaint); *Fisher v. Flynn*, 598 F.2d 663, 665 (1st Cir. 1979)

(civil rights complaint must state more than conclusions); *Hall v. Pennsylvania State Police*, 570 F.2d 86, 89 (3d Cir. 1978) (complaint must be sufficiently precise to give notice of claims asserted); *Coopersmith v. Supreme Court*, 465 F.2d 993, 994 (10th Cir. 1972) (per curiam) (complaint must state factual basis for claim asserted); *Place v. Shepherd*, 446 F.2d 1239, 1244 (6th Cir. 1971) (pleading of conclusory allegations not sufficient to state cause of action under Civil Rights Act). If such a constitutional deprivation is not sufficiently alleged, the other requirements of section 1983 need not be addressed.

Raske alleges the deprivation of a liberty interest, protected under the fourteenth amendment due process clause, to engage in a common occupation without being arbitrarily deprived of such an employment opportunity for political reasons.[2] "The concept of liberty recognized two particular interests of a public employee: 1) the protection of his good name, reputation, honor and integrity, and 2) his freedom to take advantage of other employment opportunities." *Lipp v. Board of Education of the City of Chicago*, 470 F.2d 802, 805 (7th Cir. 1972) (*citing Board of Regents v. Roth*, 408 U.S. 564, 573-74 (1972)). *See also Paul v. Davis*, 424 U.S. 693, 709-10 (1976); *Hadley v. County of DuPage*, 715 F.2d 1238, 1244 (7th Cir. 1983). Raske does not allege that his standing in the community was seriously damaged by defendant's decision not to rehire him; nor is there anything in his first amended complaint which even remotely suggests that the decision is a barrier to alternate employment. *Cf. Schware*

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[2] Only permanent police officers are statutorily protected under the state Civil Service System, *See* Ill. Rev. Stat. ch. 34 §§ 1118-1119 (1983), and Raske concedes that he has no cognizable property interest in being rehired.

v. Board of Bar Examiners, 353 U.S. 232, 238 (1957) (denial of admission to the bar). While the fact that a person has not been rehired may affect his desirability, Raske clearly remains free to seek other public employment. *Cf. Hershinow v. Bonamarte*, 735 F.2d 264 (7th Cir. 1984) (three-day suspension for unprofessional conduct which may impede advancement and reduce chance of finding a job elsewhere not sufficient stigma); *Altman v. Hurst*, 734 F.2d 1240 (7th Cir. 1984) (no liberty interest implicated in internal discipline or constructive demotion situation); *Webster v. Redmond*, 599 F.2d 793 (7th Cir. 1979), *cert. denied*, 444 U.S. 1039 (1980) (no liberty interest implicated where plaintiff denied a promotion). Consequently, the district court correctly decided that plaintiff had not sufficiently alleged the deprivation of a liberty interest protected by due process.[3]

The substance of Raske's equal protection claim is that the permanent police officers employed by defendant were entitled to a pre-termination hearing, whereas Raske, a seasonal police officer, was not entitled to (and did not receive) a similar hearing regarding his rehire. We agree with the district court's analysis and disposition of this issue as follows:

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[3] Contrary to Raske's assertion, our decision in *DiIulio v. Board of Fire and Police Commissioners*, 682 F.2d 666 (7th Cir.), *cert. denied*, 459 U.S. 1038 (1982), is consistent with *Roth* and its progeny, and did not create another type of liberty interest. In *DiIulio*, we held that plaintiffs had a liberty interest in not being subject to an arbitrary promotion system *which foreclosed other employment opportunities statewide*. Again, defendant's decision not to rehire Raske as a seasonal employee did not foreclose other employment opportunities. Further, as the district court correctly noted, *Shakman v. Democratic Organization of Cook County*, 481 F. Supp. 1315 (N.D. Ill. 1979) is inapposite because it did not involve due process claims of public employees.

> The different treatment stems from the Illinois statutes governing the dismissal of public employees. Permanent employees, employees who have passed a civil service examination, must be given a hearing prior to termination. Ill. Rev. Stat. ch. 34, § 1118. On the other hand, workers hired on a seasonal, or "as required," basis do not have a right to such a hearing. Ill. Rev. Stat. ch. 34, § 1119.
>
> It is axiomatic that the equal protection clause only guarantees like treatment to persons similarly situated. *Desris v. City of Kenosha*, 687 F.2d 1117, 1119 (7th Cir. 1982) [*cert. denied*, 103 S. Ct. 3090 (1983)]. Plaintiff claims he was similarly situated with permanent police officers because they all were police officers employed by defendant. This contention ignores the fact that plaintiff was a seasonal employee and not a permanent employee, a distinction which determines a public employee's right to a hearing under Illinois law. In this sense, plaintiff cannot allege that he was similarly situated with those employees who, by their permanent employment, were entitled to benefits to which plaintiff, a seasonal employee, was not entitled.
>
> For the foregoing reasons, plaintiff has failed to allege a cause of action for the violation of the equal protection clause of the fourteenth amendment (Appendix at 78).

Lastly, Raske alleges that his first amendment rights were violated because he was dismissed arbitrarily for "political reasons." We agree with the district court's discussion and disposition of this issue as set out below and therefore adopt it as our own.

> It is clear that in order to state a cause of action under 42 U.S.C. § 1983, the plaintiff must allege particularized facts demonstrating a constitutional deprivation. *Cohen v. Illinois Institute of Technology*, 581 F.2d 658 (7th Cir. 1978). In *Saunders v. Cahill*, 359

F. Supp. 79 (N.D. Ill. 1973), the court held that the plaintiffs' allegations were insufficient to state a cause of action under § 1983 where the plaintiffs alleged that they were denied freedom of speech because preference for appointment was based upon "political considerations." In the absence of allegations setting forth particularized facts substantiating his conclusory allegation, plaintiff has failed to state a cause of action.

Plaintiff, once again, compares his allegations with those in *Shakman v. Democratic Organization of Cook County*. In *Shakman*, the plaintiffs alleged particularized facts concerning the way the Cook County patronage system worked and how it affected the plaintiffs' rights. In contrast, plaintiff makes only a broad conclusory allegation that he was terminated for "political reasons."

Consequently, plaintiff has failed to allege a constitutional deprivation of his first amendment rights. (Appendix at 79).

For the reasons enunciated above, the dismissal of plaintiff's first amended complaint for failure to state a claim is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Frank J. McGarr, Chief Judge

Cause No. 83 C 4897 Date 02/28/84

Title of Cause: GILBERT A. RASKE v. THE BOARD OF COMMISSIONERS OF THE FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS

* * * * *

Pursuant to memorandum opinion and order entered this day, defendant's motion to dismiss plaintiff's first amended complaint is granted.—DRAFT

Status hearing set for Mar. 1, 1984 is stricken.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GILBERT A. RASKE,

Plaintiff,

No. 83 C 4897 vs.

THE BOARD OF COMMISSIONERS OF THE FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS,

Defendant.

MEMORANDUM OPINION AND ORDER

On November 4, 1983, plaintiff Gilbert Raske filed a cause of action under 42 U.S.C. § 1983 against defendant Board of Commissioners of the Forest Preserve District of Cook County, Illinois. Plaintiff alleges that he was employed by defendant as a seasonal police officer from September 1980 until December 1, 1982. Plaintiff alleges that it was defendant's custom and practice to rehire seasonal police officers every December 1. Plaintiff had been rehired on December 1, 1980 and December 1, 1981. Plaintiff was not rehired on December 1, 1982.

Plaintiff alleges that he was dismissed from his employment with defendant for political reasons. Furthermore, because he was a seasonal employee, he did not receive a hearing concerning the decision to not rehire him, whereas a permanent employee must receive a hearing prior to dismissal. Plaintiff alleges that the cessation of his employment for political reasons without a hearing violated his fourteenth amendment rights to due process

and equal protection, as well as his first amendment right to speak freely on political subjects without fear of loss of employment.

This cause is before this court on defendant's motion to dismiss plaintiff's first amended complaint. For the reasons contained herein, defendant's motion is granted.

Due Process

The initial determination to be made under plaintiff's due process claim is whether plaintiff was deprived of an interest protected by the fourteenth amendment. *Beggs v. Moffitt*, 555 F. Supp. 1344, 1349 (N.D. Ill. 1983). At this stage of this court's determination, the reason for plaintiff not being rehired is irrelevant because if no protected interest is found, no process is due. *Webster v. Redmond*, 599 F.2d 793, 797-8 (7th Cir. 1979).

It is clear that the range of interests protected by due process is not infinite. *Board of Regents v. Roth*, 408 U.S. 564, 570 (1972). Plaintiff concedes that he had no property interest in his continued employment. He contends, however, that he had a liberty interest to engage in a common occupation without being terminated arbitrarily for political reasons.

The concept of liberty recognizes two particular interests of a public employee, protection of his good name and freedom to take advantage of other employment opportunities. *Hadley v. County of DuPage*, 715 F.2d 1238, 1244 (7th Cir. 1983). It stretches the concept too far to suggest that a person is deprived of liberty when he simply is not hired in one job, but remains as free as before to seek another. *Board of Regents v. Roth*, 408 U.S. at 575. In *Roth*, the Court held that a liberty interest is not

implicated where the state, in declining to rehire a person, does not make a charge against him that might seriously damage his standing in the community or impose a stigma on that person which forecloses his freedom to take advantage of other employment opportunities. *Id.* at 573.

Roth controls the disposition of this case. Plaintiff simply was not rehired by defendant. He does not allege that defendant's decision to not rehire him seriously damaged his standing in the community or that the decision foreclosed him from seeking other employment opportunities. Consequently, plaintiff has not alleged the deprivation of a liberty interest protected by due process.

Plaintiff contends, however, that he has alleged a liberty interest under *DiIulio v. Board of Fire & Police Commissioners*, 682 F.2d 666 (7th Cir. 1982). In *DiIulio*, the plaintiffs, police patrolmen who sought promotions to sergeant, alleged that the promotion scheme required by state law included a competitive examination which was not rationally related to plaintiffs' qualifications to be police sergeants. The court held that the plaintiffs sufficiently implicated a liberty interest in promotion.

This case is distinguishable from *DiIulio*. The examination attacked in *DiIulio* was a state requirement. As such, the examination foreclosed the plaintiffs from other employment opportunities as police sergeants in Illinois. In contrast, defendant's decision to not rehire plaintiff as a seasonal employee did not prevent him from seeking other employment opportunities. Moreover, the decision to rehire seasonal employees is apparently a decision left to the discretion of the defendant and is not based on an established procedure. *See DiIulio* at 668.

Finally, plaintiff asserts that *Shakman v. Democratic Organization of Cook County*, 481 F. Supp. 1315 (N.D. Ill. 1979), recognizes that his termination was a violation of his right to due process because he was terminated arbitrarily for political reasons. *Shakman* is inapposite to the instant case, however, because it was a suit brought by independent candidates, voters, and taxpayers alleging that the patronage system established in Cook County violated their rights to fair and equal participation in the political process. *Shakman* did not involve due process claims of public employees.

For the foregoing reasons, this court finds that plaintiff has failed to allege the deprivation of a constitutionally protected interest. Consequently, plaintiff's complaint fails to state a cause of action for violation of his fourteenth amendment right to due process.

Equal Protection

With respect to his equal protection claim, the substance of plaintiff's allegations is that the permanent police officers employed by defendant were entitled to a hearing before being terminated, whereas plaintiff, a seasonal police officer, was not entitled to a hearing before the decision not to rehire him was made. The different treatment stems from the Illinois statutes governing the dismissal of public employees. Permanent employees, employees who have passed a civil service examination, must be given a hearing prior to termination. Ill. Rev. Stat. ch. 34, § 1118. On the other hand, workers hired on a seasonal, or "as required," basis do not have a right to such a hearing. Ill. Rev. Stat. ch. 34, § 1119.

It is axiomatic that the equal protection clause only guarantees like treatment to persons similarly situated.

Desris v. City of Kenosha, 687 F.2d 1117, 1119 (7th Cir. 1982). Plaintiff claims he was similarly situated with permanent police officers because they all were police officers employed by defendant. This contention ignores the fact that plaintiff was a seasonal employee and not a permanent employee, a distinction which determines a public employee's right to a hearing under Illinois law. In this sense, plaintiff cannot allege that he was similarly situated with those employees who, by their permanent employment, were entitled to benefits to which plaintiff, a seasonal employee, was not entitled.

For the foregoing reasons, plaintiff has failed to allege a cause of action for the violation of the equal protection clause of the fourteenth amendment.

First Amendment

Plaintiff alleges that his first amendment rights were violated because he was dismissed arbitrarily for "political reasons". It is clear that in order to state a cause of action under 42 U.S.C. § 1983, the plaintiff must allege particularized facts demonstrating a constitutional deprivation. *Cohen v. Illinois Institute of Technology*, 581 F.2d 658 (7th Cir. 1978). In *Saunders v. Cahill*, 369 F. Supp. 79 (N.D. Ill. 1973), the court held that the plaintiffs' allegations were insufficient to state a cause of action under § 1983 where the plaintiffs alleged that they were denied freedom of speech because preference for appointment was based upon "political considerations." In the absence of allegations setting forth particularized facts substantiating his conclusory allegation, plaintiff has failed to state a cause of action.

Plaintiff, once again, compares his allegations with those in *Shakman v. Democratic Organization of Cook County.*

In *Shakman*, the plaintiffs alleged particularized facts concerning the way the Cook County patronage system worked and how it affected the plaintiffs' rights. In contrast, plaintiff makes only a broad conclusory allegation that he was terminated for "political reasons."

Consequently, plaintiff has failed to allege a constitutional deprivation of his first amendment rights.

Conclusion

For the foregoing reasons, defendant's motion to dismiss plaintiff's first amended complaints is granted.

ENTER:

/s/ Frank J. McGarr
United States District Judge

DATED: February 28, 1984

JUDGMENT IN A CIVIL CASE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

GILBERT A. RASKE

No. 83 C 4897 v.

THE BOARD OF COMMISSIONERS OF THE FOREST PRESERVE DISTRICT OF COOK COUNTY, ILLINOIS

The Honorable **Frank J. McGarr**, Judge Presiding.

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Decision by Court. This action came to trial or hearing before the Court with the judge (magistrate) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Pursuant to memorandum opinion and order entered this day, defendant's motion to dismiss plaintiff's first amended complaint is granted.

/s/ H. Stuart Cunningham
Clerk

By /s/ Eugene Kolko
Deputy Clerk

Date: Feb. 29, 1984
Chicago, Illinois